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No. 86-1079

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

STEPHEN A. KOCZAK, KATHERINE E. ROTTER, and JOHN G. RESCH,

Appellants,

v.

G. DALLAS DIXON, THE MERCER COUNTY DEMOCRATIC CENTRAL COMMITTEE, JEFFREY LAURENTI, HOWARD KAYE, GERALD STOCKMAN, LOUISE LOMMA, JANE BURGIO, W. CARY EDWARDS, and THOMAS H. KEAN,

Appellees.

On Appeal from the United States Court of Appeals for the Third Circuit

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE CENTER FOR JUDICIAL STUDIES, IN SUPPORT OF APPELLANTS

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF THE CENTER FOR JUDICIAL STUDIES, IN SUPPORT OF APPELLANTS

Pursuant to Rule 36.1 of the Rules of this Court, the Center for Judicial Studies respectfully moves for leave to file the annexed brief *amicus curiae* in support of appellants. Appellees have refused consent for the filing of this brief.

INTEREST OF THE *AMICUS CURIAE*

The Center for Judicial Studies is a non-profit civic and educational organization concerned with fundamental issues respecting the Constitution of the United States and the operation of the courts. Affiliated with it are over two dozen constitutional scholars, law professors, attorneys, and other experts who assist the Center in performing its research and public-education functions. The Center publishes the bi-monthly magazine *Benchmark,* and supports the production of books, monographs, and occasional papers focussing on constitutional issues. In the past, the Center has submitted briefs *amicus curiae* in other cases involving questions of constitutional law, including *Wallace* v. *Jaffree,* —— U.S. ——, 105 S.Ct. 2479 (1985).

The Center is concerned with the instant appeal because, unless overruled here, the decision of the District Court, as affirmed by the Court of Appeals, will substantially subvert the democratic process in the State of New Jersey, draw into question the legitimacy of representation of that State in the Congress of the United States, and encourage illegal manipulation of the electoral systems in other States and Commonwealths throughout this nation. Thus, this appeal presents an issue of constitutional law basic to the continuance of republican government, and to the role of the courts as guardians of the integrity of that institution.

PURPOSE OF THE BRIEF *AMICUS CURIAE*

The Center recognizes that appellants have fully and ably argued their own personal interests in having this Court take jurisdiction of the appeal. Yet, by naturally emphasizing their particular circumstances, appellants may not have illuminated the stark illegality of the District Court's claim that the federal judiciary is impotent to enforce the requirements of Article I, Section 4 of the Constitution. Through its annexed brief *amicus curiae,* the Center hopes to provide this Court with a broader perspective on that fundamental jurisdictional issue, and on the pressing need for this Court to hear the appeal.

WHEREFORE, the Center prays that this Court grant its motion, and permit the filing of the annexed brief *amicus curiae.*

Respectfully submitted,

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BRIEF *AMICUS CURIAE* OF THE CENTER FOR JUDICIAL STUDIES, IN SUPPORT OF APPELLANTS

Pursuant to a motion for leave to file under Rule 36.1 of the Rules of this Court, the Center for Judicial Studies files this brief *amicus curiae* in support of appellants.

INTEREST OF THE *AMICUS CURIAE*

The interest of the Center as *amicus curiae* appears in its motion for leave to file this brief, *ante*.

ARGUMENT

Article I, Section 4 of the Constitution of the United States provides in pertinent part that "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof". This section impliedly creates a fundamental federal constitutional right for all candidates seeking election to the Congress, and for all voters desirous of supporting such candidates, to participate in an electoral process the manner of which is "prescribed in each State by the Legislature thereof".

In the State of New Jersey, the legislature has provided for the election of official "county committees of political parties",[1] and decreed that "[n]o * * * county * * * committee of any political party shall prior to any primary election endorse the candidacy of any candidate for a party nomination.".[2] Thus, in New Jersey, every candidate for congressional office, and every voter supporting such candidate, has a federal constitutional right derived from Article I, Section 4 to complain of any endorsement of a rival candidate by a "county * * * committee of [his] political part[y] * * * prior to any primary election". If a county committee abridges this right by violating New Jersey

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[1] N.J. Stat. Ann. 19:5-3.

[2] N.J. Stat. Ann. 19:34-52.

law, the candidate and voters supporting him have a clear cause of action under the federal civil-rights laws.[3]

Here, appellants Koczak (a candidate for the House of Representatives) and Rotter and Resch (voters supporting him) alleged that appellees have created and operated a so-called "central committee" that: (i) for all relevant constitutional purposes is the *alter ego* of the official county committee; and (ii) openly endorses candidates for party nominations prior to the primaries. If appellants' charges are factually correct, appellees are in clear violation of New Jersey law[4]— and, derivatively, have infringed appellants' federal constitutional rights under Article I, Section 4, as well. On the face of their complaint, then, appellants have stated a classic claim for relief under the civil-rights laws.

Yet, amazingly, the District Court dismissed appellants' complaint for want of subject-matter jurisdiction; and the Court of Appeals affirmed without comment. If these courts are correct, then Article I, Section 4 is, for all practical purposes, an impotent exhortation, leaving the federal government powerless to protect its own citizens' participation in the election of Senators and Representatives. Self-interested or corrupt local officials may (as they are alleged to have done here) simply set aside, circumvent, or pervert the electoral statutes and regulations "prescribed in each State by the Legislature thereof", immune from federal judicial scrutiny.

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[3] 42 U.S.C. §§ 1983 *et seq.*

[4] *See* Cavanaugh v. Morris County Democratic Comm., 121 N.J. Super. 430 (Ch. 1972).

If the federal government cannot effectively police the constitutional regularity of elections to Congress at the instance of candidates and voters aggrieved by local officials' practices patently impermissible under applicable state laws, then those officials enjoy an effective license to nullify Article I, Section 4 *pro tanto*—undermining the legitimacy of the entire congressional electoral process, and with it the legislative process that those elections exist to serve.[5] This result is as intolerable as a matter of constitutional theory, and impossible as a matter of political praxis, as it was incapable of coherent justification by the District Court or the Court of Appeals. Indeed, if anything, the result below carves in stark relief those courts' abdication of judicial duty in the face of a situation that threatens the very foundation of republican government.

Under these circumstances, both the substantiality of the question involved in this appeal and the irresponsibility with which the lower courts have addressed it heretofore compel this Court's review.

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[5] The spurious reasoning of the District Court would also apply to election of the President. For Article II, Section 1, Clause 2 provides in pertinent part that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" to select the President. And under the District Court's notion that the federal judiciary lacks jurisdiction to intervene in state elections the "Manner" of which the state has prescribed, corrupt local officials could exercise a *pro tanto* power of nullification over that Article, too.

CONCLUSION

For the foregoing reasons, this Court should notice the appeal and order full briefing and oral argument. In the alternative, this Court should issue a writ of certiorari to the Court of Appeals for the Third Circuit.

Respectfully submitted,

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